



House of Representatives

General Assembly

File No. 173

February Session, 2004

Substitute House Bill No. 5160

House of Representatives, March 23, 2004

The Committee on General Law reported through REP. FOX of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING NEW HOME CONSTRUCTION CONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-417d of the general statutes, as amended by
2 section 93 of public act 03-3 of the June 30 special session and section
3 146 of public act 03-6 of the June 30 special session, is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2004*):

5 (a) A new home construction contractor shall (1) prior to entering
6 into a contract with a consumer for new home construction, provide to
7 the consumer a copy of the new home construction contractor's
8 certificate of registration and a written notice that (A) discloses that the
9 certificate of registration does not represent in any manner that such
10 contractor's registration constitutes an endorsement of the quality of
11 such person's work or of such contractor's competency by the
12 commissioner, (B) advises the consumer to contact the Department of
13 Agriculture and Consumer Protection to determine (i) if such

14 contractor is registered in this state as a new home construction
15 contractor, (ii) if any complaints have been filed against such
16 contractor, and (iii) the disposition of any such complaints, and (C)
17 advises the consumer to request from such contractor a list of
18 consumers of the last twelve new homes constructed to completion by
19 the contractor during the previous twenty-four months, or if the
20 contractor has not constructed at least twelve new homes to
21 completion during the previous twenty-four months, then a list of all
22 consumers for whom the contractor has constructed a new home to
23 completion during the previous twenty-four months, and to contact
24 several individuals on the list to discuss the quality of such contractor's
25 new home construction work, (2) state in any advertisement, including
26 any advertisement in a telephone directory, the fact that such
27 contractor is registered, and (3) include such contractor's registration
28 number in any such advertisement. The new home construction
29 contractor, or [his] such contractor's agent, shall also discuss with the
30 consumer the installation of an automatic fire extinguishing system in
31 a new home.

32 (b) No new home construction contract shall be valid or enforceable
33 against a consumer unless (1) the original contract (A) is in writing and
34 signed by the consumer and the new home construction contractor,
35 and (B) contains the date of transaction, the name and business
36 address of the new home construction contractor and a starting date
37 and estimated completion date as described in this subsection, (2) any
38 oral change orders are reduced to writing signed by the consumer and
39 the new home construction contractor prior to the contract completion
40 date, and the original contract and all written and oral change orders
41 contain the entire agreement between the consumer and the new home
42 construction contractor, and (3) it is entered into by a registered new
43 home construction contractor. For the purpose of this subsection: The
44 starting date shall be the date upon which the new home construction
45 contractor begins to perform its obligations under the contract,
46 including any such work included under "substantial portion of the
47 contracted work", as defined in subsection (e) of this section; and the
48 estimated completion date shall be extended by any changes in the

49 completion date occurring due to change orders agreed to by the
50 consumer and the new home construction contractor, or due to
51 government intervention or an act of God.

52 [(b)] (c) A new home construction contractor shall include in every
53 contract with a consumer a provision advising the consumer that the
54 consumer may be contacted by such contractor's prospective
55 consumers concerning the quality and timeliness of such contractor's
56 new home construction work, unless the consumer advises such
57 contractor, in writing, at the time the contract is executed, that the
58 consumer prefers not to be contacted.

59 [(c)] (d) The written notice required in subsection (a) of this section
60 shall be in capital letters not less than ten-point bold face type, and
61 may include a statement in substantially the following form:

62 "NEW HOME CONSTRUCTION CONTRACTOR

63 REGISTRATION NOTICE

64 A CERTIFICATE OF REGISTRATION AS A NEW HOME
65 CONSTRUCTION CONTRACTOR DOES NOT REPRESENT IN ANY
66 MANNER THAT THE CONNECTICUT DEPARTMENT OF
67 AGRICULTURE AND CONSUMER PROTECTION ENDORSES THE
68 QUALITY OF THE CONTRACTOR'S NEW HOME CONSTRUCTION
69 WORK OR THE CONTRACTOR'S COMPETENCY TO ENGAGE IN
70 NEW HOME CONSTRUCTION.

71 ACCORDINGLY, YOU ARE ADVISED TO:

72 (1) REQUEST FROM THE CONTRACTOR A LIST OF
73 CONSUMERS OF THE LAST TWELVE NEW HOMES
74 CONSTRUCTED TO COMPLETION BY THE CONTRACTOR
75 DURING THE PREVIOUS TWENTY-FOUR MONTHS, OR IF THE
76 CONTRACTOR HAS NOT CONSTRUCTED AT LEAST TWELVE
77 NEW HOMES TO COMPLETION DURING THE PREVIOUS
78 TWENTY-FOUR MONTHS, THEN A LIST OF ALL CONSUMERS
79 FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW

80 HOME TO COMPLETION DURING THE PREVIOUS TWENTY-
81 FOUR MONTHS,

82 (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO
83 DISCUSS THE QUALITY AND THE TIMELINESS OF THE
84 CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND

85 (3) CONTACT THE DEPARTMENT OF AGRICULTURE AND
86 CONSUMER PROTECTION TO VERIFY THE REGISTRATION
87 INFORMATION PRESENTED BY THE CONTRACTOR AND TO
88 ASCERTAIN THE CONTRACTOR'S COMPLAINT HISTORY WITH
89 THE DEPARTMENT.

90 IN ADDITION, YOU ARE ADVISED TO DISCUSS WITH THE
91 NEW HOME CONSTRUCTION CONTRACTOR:

92 (1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE
93 POLICY AND IF SO, THE IDENTITY OF THE PERSON
94 DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT
95 ABOUT THE CONTRACTOR'S WORK,

96 (2) WHETHER THE CONTRACTOR WILL HOLD YOU
97 HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR
98 HIRED BY THE CONTRACTOR, AND

99 (3) THE INSTALLATION OF AN AUTOMATIC FIRE
100 EXTINGUISHING SYSTEM.

101 THIS NOTICE DOES NOT CONTAIN AN EXHAUSTIVE LIST OF
102 THE INQUIRIES YOU SHOULD MAKE BEFORE CONTRACTING
103 WITH A NEW HOME CONSTRUCTION CONTRACTOR.
104 ADDITIONAL INFORMATION TO ASSIST YOU IN YOUR
105 SELECTION OF A NEW HOME CONSTRUCTION CONTRACTOR
106 MAY BE OBTAINED BY CONTACTING THE CONNECTICUT
107 DEPARTMENT OF AGRICULTURE AND CONSUMER
108 PROTECTION."

109 [(d)] (e) No person shall: (1) Present, or attempt to present as such

110 person's own, the certificate of another; (2) knowingly give false
111 evidence of a material nature to the commissioner for the purpose of
112 procuring a certificate; (3) represent such person falsely as, or
113 impersonate, a registered new home construction contractor; (4) use or
114 attempt to use a certificate which has expired or which has been
115 suspended or revoked; (5) engage in the business of a new home
116 construction contractor or hold himself or herself out as a new home
117 construction contractor without having a current certificate of
118 registration under sections 20-417a to 20-417i, inclusive, as amended,
119 and subsection (b) of section 20-421; (6) represent in any manner that
120 such person's registration constitutes an endorsement of the quality of
121 such person's work or of such person's competency by the
122 commissioner; or (7) fail to refund a deposit paid to a new home
123 construction contractor not later than ten days after a written request
124 mailed or delivered to the new home construction contractor's last
125 known address, if (A) the consumer has complied with the terms of the
126 written contract up to the time of the request, (B) no substantial
127 portion of the contracted work has been performed at the time of the
128 request, (C) more than thirty days has elapsed since the starting date
129 specified in the written contract or more than thirty days has elapsed
130 since the date of the contract if such contract does not specify a starting
131 date, and (D) the new home construction contractor has failed to
132 provide a reasonable explanation to the consumer concerning such
133 contractor's failure to perform a substantial portion of the contracted
134 work. For purposes of this subdivision, "substantial portion of the
135 contracted work" includes, but is not limited to, work performed by
136 the new home construction contractor to (i) secure permits and
137 approvals, (ii) redraft plans or obtain engineer, architect, surveyor or
138 other approvals for changes requested by the consumer or made
139 necessary by site conditions discovered after the contract is executed,
140 (iii) schedule site work or arrange for other contractors to perform
141 services related to the construction of the consumer's new home, and
142 (iv) do any other work referred to in the contract as a "substantial
143 portion of the contracted work".

144 Sec. 2. Section 20-417e of the general statutes, as amended by section

145 2 of public act 03-167, is repealed and the following is substituted in
146 lieu thereof (*Effective October 1, 2004*):

147 In addition to any other remedy provided for in sections 20-417a to
148 20-417i, inclusive, as amended, [and subsection (b) of section 20-421,]
149 any person who violates any provision of [subsection (d)] subdivisions
150 (1) to (6), inclusive of subsection (e) of section 20-417d, as amended by
151 this act, shall be guilty of a class A misdemeanor. Notwithstanding
152 subsection (d) of section 53a-29 or section 54-56e, as amended, if the
153 court determines that a contractor cannot fully repay any victim of the
154 violations committed by the contractor within the period of probation
155 established in subsection (d) of section 53a-29 or section 54-56e, as
156 amended, the court may impose probation for a period of not more
157 than five years. Any person who violates the provisions of subdivision
158 (7) of subsection [(d)] (e) of section 20-417d, as amended by this act,
159 shall be liable for treble damages and shall be guilty of a class A
160 misdemeanor. Notwithstanding section 54-193, such person may be
161 prosecuted within three years after such violation.

162 Sec. 3. Subsection (c) of section 20-427 of the general statutes is
163 repealed and the following is substituted in lieu thereof (*Effective*
164 *October 1, 2004*):

165 (c) In addition to any other remedy provided for in this chapter, (1)
166 any person who violates any provision of subsection (b) of this section,
167 except [subdivision (8)] subdivisions (6), (7) and (8) of said subsection
168 (b), shall be guilty of a class [B] A misdemeanor, and (2) any person
169 who violates the provisions of subdivision (8) of subsection (b) of this
170 section shall be guilty of a class B misdemeanor if the home
171 improvement that is offered or made has a total cash price of [ten] one
172 thousand dollars or less and shall be guilty of a class A misdemeanor if
173 the home improvement that is offered or made has a total cash price of
174 more than [ten] one thousand dollars. Any person who violates the
175 provisions of subdivision (6) or (7) of subsection (b) of this section shall
176 be guilty of a class B misdemeanor. Notwithstanding subsection (d) of
177 section 53a-29 or section 54-56e, as amended, if the court determines

178 that a contractor cannot fully repay his victims within the period of
179 probation established in subsection (d) of section 53a-29 or section 54-
180 56e, as amended, the court may impose probation for a period of not
181 more than five years. A violation of any of the provisions of this
182 chapter shall be deemed an unfair or deceptive trade practice under
183 subsection (a) of section 42-110b.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Consumer Protection, Dept.	GF - None	None	None
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill extends the the statute of limitations from one to three years for violations of the law requiring the return of a consumer's deposit if certain conditions are met. Any related fiscal impact is expected to be minimal since few offenses occur under current law. The bill also increases certain criminal penalties in the Home Improvement Act. It is anticipated that any resulting revenue from fines would be minimal.

OLR Bill Analysis

sHB 5160

AN ACT CONCERNING NEW HOME CONSTRUCTION CONTRACTORS**SUMMARY:**

This bill makes new home construction contracts invalid and unenforceable against consumers unless (1) certain provisions are in the contract, (2) change orders are written and signed, and (3) the contract is between a consumer and a registered new home construction contractor. It extends the statute of limitations from one to three years for violations of the law requiring the return of a consumer's deposit if certain conditions are met.

Finally, it increases certain criminal penalties in the Home Improvement Act.

EFFECTIVE DATE: October 1, 2004

NEW HOME CONSTRUCTION CONTRACT PROVISIONS

The bill makes new home construction contracts invalid and unenforceable against a consumer unless (1) the original contract (a) is written and signed by both the consumer and the contractor and (b) contains the transaction date, name and business address of the contractor, starting date, and estimated completion date; (2) change orders are written and signed by both parties before the contract completion date and the original contract and the change orders together constitute the entire agreement between the parties; and (3) it is entered into between a registered new home contractor and a consumer.

For this purpose and the law's provisions on failure to return deposits, the starting date is the date on which the contractor begins to perform a "substantial portion of the contracted work," which includes (1) securing permits and approvals; (2) redrafting plans or obtaining engineer, architect, surveyor, or other approvals for changes requested by the consumer or made necessary by site conditions discovered after

the contract was signed; (3) scheduling site work or arranging for other contractors to perform other services; and (4) doing any other work referred to as “substantial portion of the contracted work” in the contract.

STATUTE OF LIMITATIONS ON PROSECUTIONS FOR FAILURE TO RETURN DEPOSITS

Generally, the statute of limitations for prosecuting a class A or B misdemeanor is one year after the offense was committed. The bill extends this to three years for a new home contractor who fails to refund a deposit within 10 days after a written request sent to the contractor’s last-known business address if: (1) the consumer has complied with the terms of the contract up to the time of the request, (2) no substantial portion of the contracted work has been performed, (3) more that 30 days has passed since (a) the specified starting date or (b) the contract date if the contract does not specify a starting date, and (4) the contractor has not provided a reasonable explanation concerning his failure to perform.

HOME IMPROVEMENT ACT PENALTIES

The bill increases, from a class B to a class A misdemeanor’, the penalty for (1) presenting, or attempting to present, another’s registration certificate; (2) knowingly giving false evidence of a material nature to the commissioner to obtain a registration certificate; (3) falsely representing to be a registered contractor or salesman; (4) using or attempting to use an expired, suspended, or revoked registration certificate; and (5) offering to make or making a home improvement without being registered as a home improvement contractor. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both. A class B misdemeanor is punishable by up to six months in prison, a fine of up to \$500, or both.

The law makes it a class B misdemeanor for a home improvement contractor to fail to refund a deposit within 10 days after a written request is sent to the contractor’s last-known business address if (1) no substantial portion of the contracted work has been performed and (2) more that 30 days has passed since (a) the specified starting date or (b) the contract date if the contract does not specify a starting date, and (3) the contract is worth \$10,000 or less. It is a class A misdemeanor if the contract is worth more than that amount. The bill lowers the threshold

for the enhanced penalty from \$10,000 to \$1,000.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0